BANKS AND BANKING—CHECKS—APPROPRIATION OF DEPOSIT—GARNISHMENT.—The plaintiff brought this action to recover from the defendant bank certain deposits to the credit of his judgment debtor, which had been attached while in the hands of the bank. The judgment debtor had, before the levy, drawn a check in favor of the Merchants National Bank of Cincinnati and deposited it in that bank, receiving credit therefor. When this check was presented, the defendant bank paid the amount, although the deposit had already been levied upon under the attachment. *Held,* a check is an assignment *pro tanto* of the deposit and is a prior lien over an attachment levied after the drawing of the check, but before its presentment. However, the Merchants National Bank was not a holder for value because it had given only a conditional credit for the check, and not being a holder for value did not come within the rule. *Boswell et al.* v. *Citizens' Savings Bank* (1906), — Ky. —, 96 S. W. Rep. 797.

The question of priority between the check-holder and an attaching creditor is one not decided with uniformity. The controlling question is whether or not a check is considered an assignment of funds. In those states in which the doctrine that a check is an assignment prevails the check-holder has priority over the attaching creditor. *Deatheridge* v. *Crumbaugh,* 8 Ky. Law Rep. 592; *Rosenbaum & Co.* v. *Lytle & Co.,* 8 Ky. Law Rep. 607; *Winchester Bank* v. *Clark County National Bank,* 51 S. W. (Ky.) 315; *Nat. Bank of America* v. *Indiana Banking Co.,* 114 Ill. 483, 2 N. E. 401; *Roberts* v. *Austin Corbin & Co.,* 26 Iowa, 315; *Miller* v. *Hubbard,* 4 Cranch C. C. 451, Fed. Cas. No. 9, 574; *Pease* v. *Landauer,* 63 Wis. 20, 53 Am. Rep. 247. On the other hand, in those states in which a check is held not to be an assignment of funds, the intervening attaching creditor is given priority over the check-holder. See *Harrison, Rec.* v. *Wright et al.,* 100 Ind. 515, 50 Am. Rep. 805, in which the authorities are compiled; also *Bullard* v. *Randall,* 1 Gray (Mass.) 605, 61 Am. Dec. 433; *Loyd* v. *McCaffrey,* 46 Pa. St. 410; *Duncan* v. *Berlin,* 60 N. Y. 151; *Bank of Tacoma* v. *Chilberg,* 14 Wash. 247; *Imboden* v. *Perrie,* 81 Tenn. 504; *Love* v. *Ardmore Stock Exchange et al.,* 82 S. W. (Ind. Terr.) 721; *Florence Min. Co.* v. *Brown,* 124 U. S. 385. This case should be distinguished from one in which the check has been given for the exact amount of the deposit. In such a case many courts hold that a check is an assignment. See *Moore* v. *Davis,* 57 Mich. 251, and cases cited. It should also be noticed that the law in Kentucky has been changed by statute since this case arose: § 189 of "An Act relating to negotiable instruments," Acts 1904, p. 250, provides that a check is not an assignment of a bank deposit.

CHATTEL MORTGAGES—RETENTION OF POSSESSION AND POWER OF SALE BY MORTGAGOR—FRAUD.—Action of replevin by the mortgagee of goods against the sheriff, who had levied upon the goods in the hands of the mortgagor on an execution against him. The sheriff defended on the ground that the mortgage was fraudulent in law because the mortgagor was allowed to retain possession and sell the goods mortgaged in the ordinary course of trade. *Held,* that the mortgage was not void or fraudulent against creditors as a matter